

Senate Engrossed House Bill

**FILED**

**JANICE K. BREWER  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

CHAPTER 97

## **HOUSE BILL 2129**

AN ACT

AMENDING SECTION 13-604.01, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 35.1, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-3560; AMENDING SECTION 13-3821, ARIZONA REVISED STATUTES; RELATING TO SEXUAL EXPLOITATION OF CHILDREN.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-604.01, Arizona Revised Statutes, is amended to  
3 read:

4 13-604.01. Dangerous crimes against children; sentences;  
5 definitions

6 A. A person who is at least eighteen years of age and who stands  
7 convicted of a dangerous crime against children in the first degree involving  
8 sexual assault of a minor who is twelve years of age or younger or sexual  
9 conduct with a minor who is twelve years of age or younger shall be sentenced  
10 to life imprisonment and is not eligible for suspension of sentence,  
11 probation, pardon or release from confinement on any basis except as  
12 specifically authorized by section 31-233, subsection A or B until the person  
13 has served thirty-five years or the sentence is commuted. This subsection  
14 does not apply to masturbatory contact.

15 B. Except as otherwise provided in this section, a person who is at  
16 least eighteen years of age or who has been tried as an adult and who stands  
17 convicted of a dangerous crime against children in the first degree involving  
18 attempted first degree murder of a minor who is under twelve years of age,  
19 second degree murder of a minor who is under twelve years of age, sexual  
20 assault of a minor who is under twelve years of age, sexual conduct with a  
21 minor who is under twelve years of age or manufacturing methamphetamine under  
22 circumstances that cause physical injury to a minor who is under twelve years  
23 of age may be sentenced to life imprisonment and is not eligible for  
24 suspension of sentence, probation, pardon or release from confinement on any  
25 basis except as specifically authorized by section 31-233, subsection A or B  
26 until the person has served thirty-five years or the sentence is commuted.  
27 If a life sentence is not imposed pursuant to this subsection, the person  
28 shall be sentenced to a presumptive term of imprisonment for twenty years.

29 C. Except as otherwise provided in this section, a person who is at  
30 least eighteen years of age or who has been tried as an adult and who stands  
31 convicted of a dangerous crime against children in the first degree involving  
32 attempted first degree murder of a minor who is twelve, thirteen or fourteen  
33 years of age, second degree murder of a minor who is twelve, thirteen or  
34 fourteen years of age, sexual assault of a minor who is twelve, thirteen or  
35 fourteen years of age, taking a child for the purpose of prostitution, child  
36 prostitution, sexual conduct with a minor who is twelve, thirteen or fourteen  
37 years of age, continuous sexual abuse of a child, sex trafficking of a minor  
38 who is under fifteen years of age or manufacturing methamphetamine under  
39 circumstances that cause physical injury to a minor who is twelve, thirteen  
40 or fourteen years of age or involving or using minors in drug offenses shall  
41 be sentenced to a presumptive term of imprisonment for twenty years. If the  
42 convicted person has been previously convicted of one predicate felony the  
43 person shall be sentenced to a presumptive term of imprisonment for thirty  
44 years.

1       D. Except as otherwise provided in this section, a person who is at  
2       least eighteen years of age or who has been tried as an adult and who stands  
3       convicted of a dangerous crime against children in the first degree involving  
4       aggravated assault, molestation of a child, commercial sexual exploitation of  
5       a minor, sexual exploitation of a minor, child abuse or kidnapping shall be  
6       sentenced to a presumptive term of imprisonment for seventeen years. If the  
7       convicted person has been previously convicted of one predicate felony the  
8       person shall be sentenced to a presumptive term of imprisonment for  
9       twenty-eight years.

10       E. Except as otherwise provided in this section, a person who is at  
11       least eighteen years of age or who has been tried as an adult and who stands  
12       convicted of a dangerous crime against children involving luring a minor for  
13       sexual exploitation pursuant to section 13-3554 OR UNLAWFUL AGE  
14       MISREPRESENTATION PURSUANT TO SECTION 13-3560 is guilty of a class 3 felony  
15       and shall be sentenced to a presumptive term of imprisonment for ten years  
16       and, unless the person has previously been convicted of a predicate felony,  
17       the presumptive term may be increased or decreased by up to five years  
18       pursuant to section 13-702, subsections B, C and D. If the person is  
19       sentenced to a term of imprisonment the person is not eligible for release  
20       from confinement on any basis except as specifically authorized by section  
21       31-233, subsection A or B until the sentence imposed by the court has been  
22       served, the person is eligible for release pursuant to section 41-1604.07 or  
23       the sentence is commuted. If the convicted person has been previously  
24       convicted of one predicate felony the person shall be sentenced to a  
25       presumptive term of imprisonment for fifteen years and is not eligible for  
26       suspension of sentence, probation, pardon or release from confinement on any  
27       basis except as specifically authorized by section 31-233, subsection A or B  
28       until the sentence imposed by the court has been served, the person is  
29       eligible for release pursuant to section 41-1604.07 or the sentence is  
30       commuted.

31       F. Except as otherwise provided in this section, a person who is at  
32       least eighteen years of age or who has been tried as an adult and who stands  
33       convicted of a dangerous crime against children involving sexual abuse under  
34       section 13-1404 or bestiality under section 13-1411, subsection A, paragraph  
35       2 is guilty of a class 3 felony and shall be sentenced to a presumptive term  
36       of imprisonment for five years, and unless the person has previously been  
37       convicted of a predicate felony, the presumptive term may be increased or  
38       decreased by up to two and one-half years pursuant to section 13-702,  
39       subsections B, C and D. If the person is sentenced to a term of imprisonment  
40       the person is not eligible for release from confinement on any basis except  
41       as specifically authorized by section 31-233, subsection A or B until the  
42       sentence imposed by the court has been served, the person is eligible for  
43       release pursuant to section 41-1604.07 or the sentence is commuted. If the  
44       convicted person has been previously convicted of one predicate felony the  
45       person shall be sentenced to a presumptive term of imprisonment for fifteen

1 years and is not eligible for suspension of sentence, probation, pardon or  
2 release from confinement on any basis except as specifically authorized by  
3 section 31-233, subsection A or B until the sentence imposed by the court has  
4 been served, the person is eligible for release pursuant to section  
5 41-1604.07 or the sentence is commuted.

6 G. The presumptive sentences prescribed in subsections B, C and D of  
7 this section or subsections E and F of this section if the person has  
8 previously been convicted of a predicate felony may be increased or decreased  
9 by up to seven years pursuant to the provisions of section 13-702,  
10 subsections B, C and D.

11 H. Except as provided in subsection F of this section, a person  
12 sentenced for a dangerous crime against children in the first degree pursuant  
13 to this section is not eligible for suspension of sentence, probation, pardon  
14 or release from confinement on any basis except as specifically authorized by  
15 section 31-233, subsection A or B until the sentence imposed by the court has  
16 been served or commuted.

17 I. A person who stands convicted of any dangerous crime against  
18 children in the first degree pursuant to subsection C or D of this section  
19 and who has been previously convicted of two or more predicate felonies shall  
20 be sentenced to life imprisonment and is not eligible for suspension of  
21 sentence, probation, pardon or release from confinement on any basis except  
22 as specifically authorized by section 31-233, subsection A or B until the  
23 person has served not fewer than thirty-five years or the sentence is  
24 commuted.

25 J. Notwithstanding chapter 10 of this title, a person who is at least  
26 eighteen years of age or who has been tried as an adult and who stands  
27 convicted of a dangerous crime against children in the second degree pursuant  
28 to subsection C or D of this section is guilty of a class 3 felony and shall  
29 be sentenced to a presumptive term of imprisonment for ten years. The  
30 presumptive term may be increased or decreased by up to five years pursuant  
31 to section 13-702, subsections B, C and D. If the person is sentenced to a  
32 term of imprisonment the person is not eligible for release from confinement  
33 on any basis except as specifically authorized by section 31-233, subsection  
34 A or B until the person has served the sentence imposed by the court, the  
35 person is eligible for release pursuant to section 41-1604.07 or the sentence  
36 is commuted. A person who is convicted of any dangerous crime against  
37 children in the second degree and who has been previously convicted of one or  
38 more predicate felonies is not eligible for suspension of sentence,  
39 probation, pardon or release from confinement on any basis except as  
40 specifically authorized by section 31-233, subsection A or B until the  
41 sentence imposed by the court has been served, the person is eligible for  
42 release pursuant to section 41-1604.07 or the sentence is commuted.

43 K. Section 13-604, subsections M and O apply to the determination of  
44 prior convictions.

1 L. The sentence ~~that is~~ imposed on a person by the court for a  
2 dangerous crime against children under subsection D of this section ~~and that~~  
3 ~~involves~~ INVOLVING child molestation or sexual abuse pursuant to subsection F  
4 of this section may be served concurrently with other sentences if the  
5 offense involved only one victim. The sentence imposed on a person for any  
6 other dangerous crime against children in the first or second degree shall be  
7 consecutive to any other sentence imposed on the person at any time,  
8 including child molestation and sexual abuse of the same victim.

9 M. In this section, for purposes of punishment an unborn child shall  
10 be treated like a minor who is under twelve years of age.

11 N. For the purposes of this section:

12 1. "Dangerous crime against children" means any of the following that  
13 is committed against a minor who is under fifteen years of age:

14 (a) Second degree murder.

15 (b) Aggravated assault resulting in serious physical injury or  
16 involving the discharge, use or threatening exhibition of a deadly weapon or  
17 dangerous instrument.

18 (c) Sexual assault.

19 (d) Molestation of a child.

20 (e) Sexual conduct with a minor.

21 (f) Commercial sexual exploitation of a minor.

22 (g) Sexual exploitation of a minor.

23 (h) Child abuse as prescribed in section 13-3623, subsection A,  
24 paragraph 1.

25 (i) Kidnapping.

26 (j) Sexual abuse.

27 (k) Taking a child for the purpose of prostitution as prescribed in  
28 section 13-3206.

29 (l) Child prostitution as prescribed in section 13-3212.

30 (m) Involving or using minors in drug offenses.

31 (n) Continuous sexual abuse of a child.

32 (o) Attempted first degree murder.

33 (p) Sex trafficking.

34 (q) Manufacturing methamphetamine under circumstances that cause  
35 physical injury to a minor.

36 (r) Bestiality as prescribed in section 13-1411, subsection A,  
37 paragraph 2.

38 (s) Luring a minor for sexual exploitation.

39 (t) UNLAWFUL AGE MISREPRESENTATION.

40 A dangerous crime against children is in the first degree if it is a  
41 completed offense and is in the second degree if it is a preparatory offense,  
42 except attempted first degree murder is a dangerous crime against children in  
43 the first degree.

13-3560. Unlawful age misrepresentation; classification;  
definition

B. IT IS NOT A DEFENSE TO A PROSECUTION FOR A VIOLATION OF THIS SECTION THAT THE RECIPIENT IS NOT A MINOR.

D. UNLAWFUL AGE MISREPRESENTATION IS A CLASS 3 FELONY, AND IF THE MINOR IS UNDER FIFTEEN YEARS OF AGE IT IS PUNISHABLE PURSUANT TO SECTION 13-604.01.

1. A COMPUTER, COMPUTER SYSTEM OR NETWORK AS DEFINED IN SECTION 13-2301.

Sec. 3. Section 13-3821, Arizona Revised Statutes, is amended to read:

A. A person who has been convicted of a violation or attempted violation of any of the following offenses or who has been convicted of an offense committed in another jurisdiction that if committed in this state would be a violation or attempted violation of any of the following offenses or an offense that was in effect before September 1, 1978 and that, if committed on or after September 1, 1978, has the same elements of an offense listed in this section or who is required to register by the convicting jurisdiction, within ten days after the conviction or within ten days after entering and remaining in any county of this state, shall register with the sheriff of that county:

- 1           1. Unlawful imprisonment pursuant to section 13-1303 if the victim is
- 2 under eighteen years of age and the unlawful imprisonment was not committed
- 3 by the child's parent.
- 4           2. Kidnapping pursuant to section 13-1304 if the victim is under
- 5 eighteen years of age and the kidnapping was not committed by the child's
- 6 parent.
- 7           3. Sexual abuse pursuant to section 13-1404 if the victim is under
- 8 eighteen years of age.
- 9           4. Sexual conduct with a minor pursuant to section 13-1405.
- 10          5. Sexual assault pursuant to section 13-1406.
- 11          6. Sexual assault of a spouse if the offense was committed before
- 12 August 12, 2005.
- 13          7. Molestation of a child pursuant to section 13-1410.
- 14          8. Continuous sexual abuse of a child pursuant to section 13-1417.
- 15          9. Taking a child for the purpose of prostitution pursuant to section
- 16 13-3206.
- 17          10. Child prostitution pursuant to section 13-3212.
- 18          11. Commercial sexual exploitation of a minor pursuant to section
- 19 13-3552.
- 20          12. Sexual exploitation of a minor pursuant to section 13-3553.
- 21          13. Luring a minor for sexual exploitation pursuant to section 13-3554.
- 22          14. Sex trafficking of a minor pursuant to section 13-1307.
- 23          15. A second or subsequent violation of indecent exposure to a person
- 24 under fifteen years of age pursuant to section 13-1402.
- 25          16. A second or subsequent violation of public sexual indecency to a
- 26 minor under the age of fifteen years pursuant to section 13-1403,
- 27 subsection B.
- 28          17. A third or subsequent violation of indecent exposure pursuant to
- 29 section 13-1402.
- 30          18. A third or subsequent violation of public sexual indecency pursuant
- 31 to section 13-1403.
- 32          19. A violation of section 13-3822 or 13-3824.
- 33          20. UNLAWFUL AGE MISREPRESENTATION.
- 34          B. Before the person is released from confinement the state department
- 35 of corrections in conjunction with the department of public safety and each
- 36 county sheriff shall complete the registration of any person who was
- 37 convicted of a violation of any offense listed under subsection A of this
- 38 section. Within three days after the person's release from confinement, the
- 39 state department of corrections shall forward the registered person's records
- 40 to the department of public safety and to the sheriff of the county in which
- 41 the registered person intends to reside. Registration pursuant to this
- 42 subsection shall be consistent with subsection E of this section.
- 43          C. Notwithstanding subsection A of this section, the judge who
- 44 sentences a defendant for any violation of chapter 14 or 35.1 of this title
- 45 or for an offense for which there was a finding of sexual motivation pursuant

1 to section 13-118 may require the person who committed the offense to  
2 register pursuant to this section.

3 D. The court may require a person who has been adjudicated delinquent  
4 for an act that would constitute an offense specified in subsection A or C of  
5 this section to register pursuant to this section. Any duty to register  
6 under this subsection shall terminate when the person reaches twenty-five  
7 years of age.

8 E. A person who has been convicted of or adjudicated delinquent and  
9 who is required to register in the convicting state for an act that would  
10 constitute an offense specified in subsection A or C of this section and who  
11 is not a resident of this state shall be required to register pursuant to  
12 this section if the person is either:

13 1. Employed full-time or part-time in this state, with or without  
14 compensation, for more than fourteen consecutive days or for an aggregate  
15 period of more than thirty days in a calendar year.

16 2. Enrolled as a full-time or part-time student in any school in this  
17 state for more than fourteen consecutive days or for an aggregate period of  
18 more than thirty days in a calendar year. For the purposes of this  
19 paragraph, "school" means an educational institution of any description,  
20 public or private, wherever located in this state.

21 F. Any duty to register under subsection D or E of this section for a  
22 juvenile adjudication terminates when the person reaches twenty-five years of  
23 age.

24 G. The court may order the termination of any duty to register under  
25 this section on successful completion of probation if the person was under  
26 eighteen years of age when the offense for which the person was convicted was  
27 committed.

28 H. The court may order the suspension or termination of any duty to  
29 register under this section after a hearing held pursuant to section 13-923.

30 I. At the time of registering, the person shall sign or affix an  
31 electronic fingerprint to a statement giving such information as required by  
32 the director of the department of public safety, including all names by which  
33 the person is known, any required online identifier and the name of any  
34 website or internet communication service where the identifier is being used.  
35 The sheriff shall fingerprint and photograph the person and within three days  
36 thereafter shall send copies of the statement, fingerprints and photographs  
37 to the department of public safety and the chief of police, if any, of the  
38 place where the person resides. The information that is required by this  
39 subsection shall include the physical location of the person's residence and  
40 the person's address. If the person has a place of residence that is  
41 different from the person's address, the person shall provide the person's  
42 address, the physical location of the person's residence and the name of the  
43 owner of the residence if the residence is privately owned and not offered  
44 for rent or lease. If the person receives mail at a post office box, the  
45 person shall provide the location and number of the post office box. If the



1 person does not have an address or a permanent place of residence, the person  
2 shall provide a description and physical location of any temporary residence  
3 and shall register as a transient not less than every ninety days with the  
4 sheriff in whose jurisdiction the transient is physically present.

5 J. On the person's initial registration and every year after the  
6 person's initial registration, the person shall confirm any required online  
7 identifier and the name of any website or internet communication service  
8 where the identifier is being used— AND the person shall obtain a new  
9 nonoperating identification license or a driver license from the motor  
10 vehicle division in the department of transportation and shall carry a valid  
11 nonoperating identification license or a driver license. Notwithstanding  
12 sections 28-3165 and 28-3171, the license is valid for one year from the date  
13 of issuance, and the person shall submit to the department of transportation  
14 proof of the person's address and place of residence. The motor vehicle  
15 division shall annually update the person's address and photograph and shall  
16 make a copy of the photograph available to the department of public safety or  
17 to any law enforcement agency. The motor vehicle division shall provide to  
18 the department of public safety daily address updates for persons required to  
19 register pursuant to this section.

20 K. Except as provided in subsection E or ~~K~~ L of this section, the  
21 clerk of the superior court in the county in which a person has been  
22 convicted of a violation of any offense listed under subsection A of this  
23 section or has been ordered to register pursuant to subsection C or D of this  
24 section shall notify the sheriff in that county of the conviction within ten  
25 days after entry of the judgment.

26 L. Within ten days after entry of judgment, a court not of record  
27 shall notify the arresting law enforcement agency of an offender's conviction  
28 of a violation of section 13-1402. Within ten days after receiving this  
29 information, the law enforcement agency shall determine if the offender is  
30 required to register pursuant to this section. If the law enforcement agency  
31 determines that the offender is required to register, the law enforcement  
32 agency shall provide the information required by section 13-3825 to the  
33 department of public safety and shall make community notification as required  
34 by law.

35 M. A person who is required to register pursuant to this section  
36 because of a conviction for the unlawful imprisonment of a minor or the  
37 kidnapping of a minor is required to register, absent additional or  
38 subsequent convictions, for a period of ten years from the date that the  
39 person is released from prison, jail, probation, community supervision or  
40 parole and the person has fulfilled all restitution obligations.  
41 Notwithstanding this subsection, a person who has a prior conviction for an  
42 offense for which registration is required pursuant to this section is  
43 required to register for life.

1       N. A person who is required to register pursuant to this section and  
2 who is a student at a public or private institution of postsecondary  
3 education or who is employed, with or without compensation, at a public or  
4 private institution of postsecondary education or who carries on a vocation  
5 at a public or private institution of postsecondary education shall notify  
6 the county sheriff having jurisdiction of the institution of postsecondary  
7 education. The person required to register pursuant to this section shall  
8 also notify the sheriff of each change in enrollment or employment status at  
9 the institution.

10       O. At the time of registering, the sheriff shall secure a sufficient  
11 sample of blood or other bodily substances for deoxyribonucleic acid testing  
12 and extraction from a person who has been convicted of an offense committed  
13 in another jurisdiction that if committed in this state would be a violation  
14 or attempted violation of any of the offenses listed in subsection A of this  
15 section or an offense that was in effect before September 1, 1978 and that,  
16 if committed on or after September 1, 1978, has the same elements of an  
17 offense listed in subsection A of this section or who is required to register  
18 by the convicting jurisdiction. The sheriff shall transmit the sample to the  
19 department of public safety.

20       P. Any person required to register under subsection A of this section  
21 shall register ~~their~~ THE PERSON'S required online identifier and the name of  
22 any website or internet communication service where the identifier is being  
23 used or intends to use the identifier with the sheriff from and after  
24 December 31, 2007, regardless of whether the person was required to register  
25 an identifier at the time of ~~their~~ THE PERSON'S initial registration under  
26 this section.

27       Q. For the purposes of this section:

28       1. "Address" means the location at which the person receives mail.

29       2. "Required online identifier" means any electronic e-mail address  
30 information or instant message, chat, social networking or other similar  
31 internet communication name, but does not include A social security number,  
32 date of birth, or pin number.

33       3. "Residence" means the person's dwelling place, whether permanent or  
34 temporary.

APPROVED BY THE GOVERNOR APRIL 28, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 28, 2008.

Passed the House February 25, 20 08

by the following vote: 56 Ayes,

0 Nays, 4 Not Voting

[Signature]  
Speaker of the House

[Signature]  
Chief Clerk of the House

Passed the Senate April 15, 20 08

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

[Signature]  
President of the Senate

[Signature]  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill received by the Governor this

           day of           , 20           

at            o'clock            M.

            
Secretary to the Governor

Approved this            day of

at            o'clock            M.

            
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this            day of           , 20           

at            o'clock            M.

            
Secretary of State

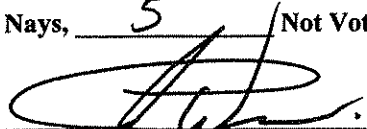
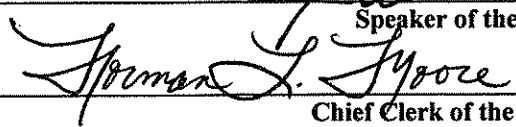
H.B. 2129

HOUSE CONCURS IN SENATE  
AMENDMENTS AND FINAL PASSAGE

April 22, 2008,

by the following vote: 55 Ayes,

0 Nays, 5 Not Voting


  
Speaker of the House  
  
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

22nd day of April, 2008

at 2:40 o'clock P. M.

  
Secretary to the Governor

Approved this 28 day of

April, 2008,

at 10<sup>15</sup> o'clock A. M.

  
Governor of Arizona

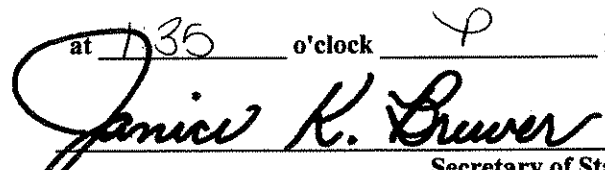
H.B. 2129

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 28 day of April, 2008,

at 1:35 o'clock P. M.

  
Secretary of State